

Service Date: November 27, 1985

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Application)	UTILITY DIVISION
of THE MONTANA POWER COMPANY for)	
Authority to Issue Securities,)	DOCKET NO. 85.11.45
Approval of the Terms of a Lever-)	
aged Lease and for Exemption from)	ORDER NO. 5168
Regulation for Certain Parties.)	

BACKGROUND

1. The Montana Power Company (hereinafter MPC) filed an application with the Montana Public Service Commission (hereinafter the Commission) on November 8, 1985. The application requests that the Commission issue an order pursuant to §§69-3-111(1), 69-3-111(3) and 69-3-501 et seq., MCA. MPC is proposing a leveraged lease transaction to dispose of its 30 percent undivided interest in Colstrip Unit No. 4 and an undivided interest in certain related common facilities. In this transaction MPC proposes to sell the facilities for approximately \$280 million to Owner Trustees acting under trust agreements for the Owner Participants. The Owner Participants are expected to be SGE (New York) Associates and Burnham Leasing Corporation. Both groups are institutional equity investors, SGE (New York) Associates is a partnership of Shell Oil Corporation and General Electric Credit Corporation. Approximately 25 percent of the purchase price will be provided by the equity investment of the Owner Participants. The remaining 75 percent will be raised from the sale of notes issued by the Owner Trustees to institutional investors (hereinafter Lenders). These notes will be issued pursuant to Trust Indenture and Security Agreements between

the Owner Trustees and a bank or trust company acting as Indenture Trustees. MPC proposes to lease back the facilities for approximately \$30 million per year basic rent for 25 years.

2. MPC is also proposing to lease to the Owner Trustees the real property where Colstrip Unit No. 4 is located and certain common facilities thereon. The duration of this lease is the estimated useful life of the facilities, approximately 40 years. The Owner Trustees will lease the real property back to Montana Power Company for an initial term of 25 years.

3. In its application MPC is seeking the following:

- 1) Pursuant to 69-3-111(1), MCA, the Commission determine that the Owner Trustees, the Owner Participants, the Lenders and the Indenture Trustees are not public utilities.
- 2) Pursuant to 69-3-111(3), MCA, the Commission approve the terms of the lease for the purpose of qualifying any party thereto for an exemption by the United States Securities and Exchange Commission (hereinafter the SEC), or its successor, from the Federal Public Utility Holding Company Act of 1935.
- 3) Pursuant to 69-3-501 et seq., MCA, the Commission approve the issuance by MPC of securities in connection with the leveraged lease.

4. Notice of this application has been given by inclusion of the application as an information item in the Commission agendas for November 11 and 25, 1985. This agenda was mailed to the agenda service list including the Montana Consumer Counsel. Additional written notice was sent to the Montana Consumer Counsel.

5. The application is supported by exhibits and data in accordance with Commission practice. Having fully considered the application, the Commission makes the following:

FINDINGS OF FACT

6. The Commission has jurisdiction over the subject matter of the application pursuant to §§69-3-111 and 69-3-501, et seq., MCA.

7. MPC is a public utility, as defined in §69-3-101, MCA. It is a corporation under Montana law engaged principally in the production, purchase, transmission, distribution and sale of electricity and natural gas in Montana.

8. MPC is attempting to dispose of its 30 percent undivided interest in Colstrip Unit No. 4 and an undivided interest in certain related common facilities through a leveraged lease transaction. MPC proposes to sell the facilities for a yet undetermined amount, estimated up to \$290 million, to Owner Trustees. The Owner Trustees act under Trust Agreements with the Owner Participants. The Owner Participants are expected to be SGE (New York) Associates and Burnham Leasing Corporation. Both groups are institutional equity investors, SGE (New York) Associates is a partnership of Shell Oil Corporation and General Electric Credit Corporation. Approximately 25 percent of the purchase price will be provided by the equity investment of the Owner Participants. The remaining 75 percent will be raised by the sale to Lenders of notes issued by the Owner Trustees. The Lenders will be institutional investors. These notes will be issued pursuant to Trust Indenture

and Security Agreements between the Owner Trustees and a bank or trust company acting as Indenture Trustees.

9. The details of the lease are as described in the application and the supporting documents, including a draft copy of the proposed lease. These agreements and instruments may be modified prior to final execution and delivery. MPC has represented to this Commission that such modifications shall not frustrate or materially alter the substance of the proposed transaction as described in the application.

10. The basic term of the lease is 25 years. Under the lease MPC has the right to renew the lease or purchase the facilities at the end of the basic term. Under certain circumstances, MPC may terminate the lease before the expiration of the basic term. Under certain circumstances MPC may purchase the facilities before the expiration of the basic term.

11. MPC proposes to lease back the facilities for approximately \$30 million per year basic rent subject to increase or decrease upon the occurrence of certain contractually agreed to events. In addition to this basic rent, MPC may be liable from time to time for supplemental rent to pay certain contractually agreed to costs, expenses, losses or damages.

12. As part of this transaction MPC also will lease to the Owner Trustees an interest in the real property where Colstrip Unit No. 4 is located and certain common facilities thereon. The duration of this lease is the estimated useful life of the facilities, approximately 40 years. The Owner Trustees will lease the real property back to Montana Power Company for an initial term of 25 years.

13. The proceeds to MPC, not to exceed \$290 million, will be used to reduce outstanding long and short term debt and for other corporate purposes which may include redemption of preferred stock. MPC has represented to the Commission that it is its intention to retire approximately \$150 million in long term debt and \$75-80 million in short term debt. The interest expense associated with this debt is estimated at \$31 to \$32 million. MPC has further represented to the Commission that it may retire \$30 to \$35 million in preferred stock.

14. The Owner Trustees, for the benefit of the Owner Participants, will own an undivided interest in Colstrip Unit No. 4 and certain common facilities. MPC will lease the property back. The property's operation and use will be vested in MPC.

15. MPC has represented to this Commission that the proposed leveraged lease transaction is in furtherance of MPC's goal of removing MPC's interest in Colstrip Unit No. 4 from MPC's electric utility plant dedicated to the service of Montana consumers at rates subject to this Commission's jurisdiction. MPC plans to use the Colstrip Unit No. 4 facilities to generate power for sale outside the jurisdiction of this Commission. Such sales would be subject to the jurisdiction of the Federal Energy Regulatory Commission. However, in the event that power generated from Colstrip Unit No. 4 facilities is sold by MPC to Montana consumers, such sales will be subject to the Commission's jurisdiction. MPC has also represented to this Commission that it concurs in this Commission's position that the approval of the terms of this lease for the purpose of qualifying any party thereto for an exemption by the United States Securities and Exchange Commission from the Federal Public Utility Holding Company Act of 1935 in no way

affects this Commission's regulatory authority over MPC in the event power generated from Colstrip Unit No. 4 is sold, or should be sold, within the jurisdiction of this Commission.

16. MPC's plan to remove its interest in Colstrip Unit No. 4 from MPC's electricity utility plant dedicated to providing electricity to Montana consumers and prevent it from entering the rate base subject to this Commission jurisdiction is lawful and consistent with the public interest. MPC's plans to use the Colstrip Unit No. 4 facilities for the generation of power for sale outside the jurisdiction of this Commission subject to the jurisdiction of the Federal Energy Regulatory Commission is lawful and consistent with the public interest. The entry by MPC into the leveraged lease transaction is in furtherance of this plan.

17. MPC proposes to sell power from Colstrip Unit No. 4 on the wholesale market. It is possible that in the future MPC will sell power from Colstrip Unit No. 4 to its Montana consumers. As with other similar transactions previously encountered by the PSC, such as sale of nonutility products to the utility and sales of a nonutility subsidiary's product to the utility, the leveraged lease poses a challenge to regulatory scrutiny. Whether the solution to this issue is a separate corporate subsidiary or a closely monitored accounting system must be determined in the future. The PSC intends to insure, however, that ratepayers today and in the future will not pay for Colstrip related costs except to the extent that power from the plant is used by them. Although the issue is not directly involved in this application, the PSC wishes to put all interested persons on notice that it will employ all measures available to it to assure that Montana ratepayers will not subsidize the plant.

18. This leveraged lease transaction may be deemed to include the issuance of securities by MPC. Any issuance of securities by MPC which may result from this transaction are for a lawful purpose and consistent with the public interest.

CONCLUSIONS OF LAW

1. Pursuant to §69-3-111(1), MCA, the Commission determines that the Owner Trustees, the Owner Participants, the Lenders and the Indenture Trustees are not public utilities subject to the jurisdiction of this Commission.

2. Pursuant to §69-3-111(3), MCA, the Commission finds that it may approve the terms of the leveraged lease transaction for the purpose of qualifying any party to the lease for an exemption by the SEC, or its successor, from the federal Public Utility Holding Company Act of 1935. This approval of the terms of the lease is solely for the purposes of 69-3-111(3), MCA, and the Public Utility Holding Company Act of 1935. This approval shall not be considered an approval of the terms of the lease for the purpose of ratemaking

3. The application for issuance of securities complies with §69-3-510 et seq., MCA.

4. Nothing in the approval of the issuance of securities can be construed to obligate the ratepayer within the jurisdiction of this Commission to satisfy the obligations arising out of these securities now or at a later date.

5. Nothing in the approval of this application can be construed to obligate the MPC ratepayers now or at any time for any costs associated with Colstrip Unit No. 4 and related common facilities nor for any costs or expenses associated with the sale

and leaseback of MPC's undivided interest in Colstrip 4 and related common facilities.

ORDER

IT IS HEREBY ORDERED THAT:

Pursuant to 69-3-111(1), MCA, the application that the Owner Trustees, The Owner Participants, The Lenders and The Indenture Trustees be determined not to be public utilities is GRANTED. Neither the Owner Trustees, nor the Owner Participants, nor the Lenders, nor the Indenture Trustees, nor any of their successors, assigns or transferees by virtue of the ownership or control of the facilities by the Owner Trustees for the benefit of the Owner Participants or the execution, delivery or performance of the documents filed as Exhibit E to the application shall be public utilities subject to the jurisdiction, control or regulation of this Commission during the terms of these leases including a renewal or extension thereof. Neither the Owner Trustees, nor the Owner Participants, nor the Lenders, nor the Indenture Trustees, nor any of their successors, assigns or transferees by virtue of the ownership or control of the facilities by the Owner Trustees for the benefit of the Owner Participants or the execution, delivery or performance of the documents filed as Exhibit E to the application shall be public utilities during the 90 day period after the termination of the leases or the 90 day period after any such entity shall gain possession of such property following a breach of the leases.

Pursuant to 69-3-111(3), MCA, the application for approval of the terms of the lease for purposes of qualifying the Owner Trustees, the Owner Participants, the Lenders and the Indenture

Trustees for an exemption by the SEC from the Public Utility Holding Company Act is GRANTED. The approval of the terms of the lease is only for the purposes of 69-3-111(3), MCA, to qualify any party thereto for an exemption by the SEC from the Holding Company Act. This approval has no effect on the regulatory authority of this Commission over MPC.

Pursuant to 69-3-501 et seq., MCA, the application for an order authorizing the issuance of securities in connection with the leveraged lease transaction is GRANTED and the application for approval of the issuance of securities in connection with the leveraged lease is GRANTED. This approval shall not be construed to obligate the ratepayer within the jurisdiction of this Commission for any costs or expenses associated with the sale and lease back of Colstrip Unit No. 4.

MPC is authorized to execute, deliver and perform a Participation Agreement, a lease, a tax indemnity agreement, and an Assignment and Assumption of Ownership Agreement and Indemnification Agreement, substantially in the forms thereof filed as Exhibits to the Application. (It being realized that since there are expected to be two Owner Participants, a separate set of such documents and the documents referred to below will be executed with each Owner Participant.)

MPC is authorized to execute, deliver and perform, a ground lease, conveyance documents and support agreements for effectuation of the purposes of the proposed transaction.

The utilization of a Trust Indenture, a Security Agreement and a Trust Agreement, substantially in the forms filed as Exhibits to the Application are hereby authorized and approved.

The agreements, documents and instruments approved herein may be modified prior to final execution and delivery if such changes and modifications do not frustrate or materially alter the substance of the proposed transaction as described in the Application and approved in this Order. MPC shall file with the Commission copies of drafts and copies of all documents as finally executed.

Nothing in this Order or any act or deed performed in connection with this Order shall be construed to obligate the Montana ratepayer to pay or guarantee in any manner whatsoever any security authorized by this Order or authorized, issued, assumed or guaranteed under the provisions of §§69-3-501 et seq., MCA. Nothing in the approval of the issuance of securities can be construed to obligate the ratepayer within the jurisdiction of this Commission to satisfy the obligations arising out of these securities now or at a later date.

Nothing in the approval of this application can be construed to obligate the MPC ratepayers now or at any time for any costs associated with Colstrip Unit No. 4 and related common facilities nor for any costs or expenses associated with the sale and leaseback of Colstrip 4 and related common facilities.

This order is without prejudice to the regulatory authority of this Commission with respect to, and is not an authorization or approval for purposes or rates, services accounts, valuations, estimates or determinations of costs.

DONE IN OPEN SESSION this 27th day of November, 1985 by a vote of 4 - 1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Commissioner

TOM MONAHAN, Commissioner

DANNY OBERG, Commissioner

JOHN B. DRISCOLL, Commissioner
(Voting to Dissent)

ATTEST:

Trenna Scoffield
Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.